

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

LARRY DOUGLAS WAYBRIGHT,

Plaintiff,

v.

Civil Action No. 2:06-CV-49

**POSTMASTER GENERAL,
U.S. POSTAL SERVICE,
John E. Potter,**

Defendant.

**DEFENDANT'S ANSWER TO FIRST
AMENDED COMPLAINT**

Defendant, John E. Potter, Postmaster General, United States Postal Service (“Defendant”) by and through his attorney, Rita R. Valdrini, Assistant United States Attorney for the Northern District of West Virginia, answers the First Amended Complaint (the “Complaint”) upon information and belief as follows:

FIRST DEFENSE

Plaintiff’s Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

In answer to the allegations of the Complaint, the Defendant responds as follows:

- 1) The Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations made in Paragraph 1 of the Complaint.
- 2) With respect to Paragraph 2 of the Complaint, the Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation that Plaintiff received a “Notice of Final Action with EEOC No. 170-22005-00149X” on January 17, 2006.

The Defendant admits that Plaintiff filed a Complaint against Defendant in U.S. District Court for the District of Maryland on April 14, 2006.

With respect to the final sentence of Paragraph 2, Defendant admits Plaintiff did not receive a “Right to Sue” letter in the “Notice of Final Action.” The Notice of Final Action advised Plaintiff of the decision of the Administrative Judge and advised him of his right to file a civil action.

3) As to Paragraph 3 of the Complaint, Defendant neither admits nor denies the allegations in the first sentence because they constitute the legal basis of the Complaint and/or conclusions of law to which no answer is required.

As to the second sentence in Paragraph 3 of the Complaint, the Defendant fails to specify the “material witness” who allegedly was not subpoenaed and did not appear. To the extent a response may be required despite the lack of specificity, the Defendant denies the allegation, stating further that neither Defendant nor the Equal Employment Opportunity Commission has subpoena authority, and, thus, no subpoenas were issued relative to the administrative hearing.

In regard to the third sentence of Paragraph 3 of the Complaint, the Defendant denies the allegations.

In regard to the fourth sentence in Paragraph 3 of the Complaint, the Defendant denies the allegations.

THIRD DEFENSE

Plaintiff cannot establish a *prima facie* case of gender discrimination.

FOURTH DEFENSE

Plaintiff cannot establish a *prima facie* case of age discrimination.

FIFTH DEFENSE

Plaintiff cannot establish a *prima facie* case of hostile work environment, harassment based on his gender or age.

SIXTH DEFENSE

Plaintiff cannot establish a *prima facie* case of reprisal and/or retaliation based on his protected EEO activity.

SEVENTH DEFENSE

Plaintiff has failed to exhaust his administrative remedies as required by Title VII of the Civil Rights Act of 1964 (78 Stat. 253, as amended by the Equal Employment Opportunity Act of 1972, 86 Stat. 103, 42 U.S.C. § 2000e, *et. seq.*) and the Age Discrimination in Employment Act, (“ADEA”) (29 U.S.C. § 633a).

EIGHTH DEFENSE

Under the ADEA, Plaintiff cannot recovery compensatory damages or attorney fees.

NINTH DEFENSE

Plaintiff’s claims are not timely.

TENTH DEFENSE

All actions taken by the federal Defendant with respect to Plaintiff’s employment were not discriminatory, were based on good faith, and were not in violation of any federal law prohibiting discrimination.

WHEREFORE, the Defendant respectfully requests that:

- 1) The Plaintiff's Complaint be dismissed with prejudice;
- 2) The Defendant be awarded costs and fees;
- 3) The Court grant such other relief as it deems appropriate.

Respectfully submitted,

Sharon L. Potter
United States Attorney

by:

/s/ Rita R. Valdrini
WV Bar No. 7864
Assistant United States Attorney
P. O. Box 591
Wheeling, WV 26003
Phone: (304) 234-0100
Fax: (304) 234-0112
E-mail: Rita.Valdrini@usdoj.gov

CERTIFICATE OF SERVICE

I, Rita R. Valdrini, Assistant United States Attorney for the Northern District of West Virginia, do hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system.

I also certify that I have mailed, by United States Postal Service, the document to the following non-CM/ECF participants:

Larry D. Waybright
Rt. 4, Box 565
Keyser, WV 26726

on this 22nd day of October, 2007.

/s/ Rita R. Valdrini
WV Bar No. 7864
Assistant United States Attorney
P. O. Box 591
Wheeling, WV 26003
Phone: (304) 234-0100
Fax: (304) 234-0112
E-mail: Rita.Valdrini@usdoj.gov